

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
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DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

MAC'S AUTO SERVICE and  
ISAIAH BELTON  
Respondents

Case Nos.: I-00-20034  
I-00-20045

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**FINAL ORDER**

**I. Introduction**

By Notice of Infraction (No. 00-20034) served on April 3, 2000, the Government charged Respondents Mac's Auto Service and Isaiah Belton with violating 20 DCMR 4203.5, which requires generators of hazardous waste to file a biennial report providing details of their off-site disposal of hazardous wastes, and 20 DCMR 4203.9, which requires generators of hazardous waste to update the initial notification of regulated activity filed for a facility upon the occurrence of certain events, such as a change in the facility's ownership. The Notice of Infraction sought a fine of \$500.00 for the violation of §4203.5 and a fine of \$100.00 for the violation of §4203.9.

Respondents did not answer the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code §6-2715). Accordingly, on May 10, 2000, this administrative court issued an order finding

Respondents in default, assessing the statutory penalty of \$600.00 pursuant to D.C. Code § 6-2704(a)(2)(A) and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Code § 6-2712(f).

On June 15, 2000, the Government served the second Notice of Infraction (No. 00-20045). Respondents also did not answer that Notice within twenty days of service. Accordingly, on August 4, 2000, a Final Notice of Default was issued, finding Respondents in default on the second Notice of Infraction and assessing total statutory penalties of \$1,200.00 pursuant to D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B). The Final Notice of Default also set September 6, 2000 as the date for an *ex parte* proof hearing, and afforded Respondents an opportunity to appear at the hearing to contest liability, fines, penalties or fees. Enclosed with the Final Notice of Default were copies of both the first and the second Notice of Infraction.

As noted in this administrative court's scheduling order filed on September 7, 2000, counsel for Respondent appeared at the September 6, 2000 hearing shortly after it began and requested a postponement, representing that counsel for the Government did not object. I granted the request and set a new hearing date of October 6, 2000. At the hearing Respondents entered a plea of Admit with Explanation to both charges. They presented no evidence, but relied solely upon the arguments of counsel.

## **II. Summary of the Argument**

Respondents' counsel asserted that Respondents did not file the appropriate forms because they are a small business and they did not understand the forms that had to be submitted.

According to Respondents' counsel, the forms are accompanied by a thick set of instructions, which intimidated Respondents. They finally completed the appropriate forms with the assistance of Mr. Hughes, the inspector who issued the Notices of Infraction, and filed the forms with the Department of Health on September 26, 2000.

### **III. Findings of Fact**

1. By their plea of Admit with Explanation, Respondents have admitted that they violated 20 DCMR 4203.5 and 20 DCMR 4203.9.
2. Respondents failed to file a timely biennial report and failed to update their hazardous waste generator's notification in a timely fashion.
3. Respondents corrected their violations by filing the required reports on September 26, 2000. Respondents' compliance was unduly delayed, as it occurred only after they were found in default on two Notices of Infraction and after the first default hearing in this matter.
4. Respondents offered no explanation for their failure to respond to either the first or the second Notice of Infraction.

### **IV. Conclusions of Law**

1. Respondents have violated 20 DCMR 4203.5 and 20 DCMR 4203.9.
2. Respondents have acknowledged responsibility for their violations and have corrected their violations by filing the appropriate reports. This justifies a

reduction in the fines for the violations, but not a suspension of them. The reduction will be modest due to Respondents' delay in complying.

3. Respondents' explanation that they are a small business, that they did not understand the forms and were "intimidated" by them does not justify suspension or reduction of the fine. Respondents chose to engage in a business that generates hazardous waste, a highly regulated activity. Respondents have a responsibility to understand the regulations and abide by them, instead of simply ignoring forms or other communications sent to them by the Government. *Cf. DOH v. Hughes Child Development Center*, OAH Final Order I-00-40030 at 3 (March 1, 2000), *appeal dismissed*, No. 00-5490-CI (Board of Appeals and Review, April 6, 2000) (party that elects to engage in regulated business is responsible for knowing and abiding by applicable regulations). Although there is no evidence that Respondents' actual disposal of their hazardous wastes was improper, the documents that they failed to file are an important tool for the Government to keep track of all hazardous waste generators, thereby ensuring that those generators are in compliance with the law. Respondents' failure to file the required information, therefore, hindered enforcement of the District's hazardous waste regulations.
4. Respondents have not demonstrated good cause for failing to respond to the Notices of Infraction. Accordingly, the penalty of \$1200.00 previously imposed by this administrative court for those failures will not be reduced. D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B).

**V. Order**

Based on the foregoing findings of fact and conclusions of law, I will not suspend the fines, but I will reduce them in recognition of Respondents' acknowledgement of responsibility and their belated efforts at compliance. Accordingly, I will reduce the fine for violating 20 DCMR 4203.5 from \$500.00 to \$425.00 and I will reduce the fine for violating 20 DCMR 4203.9 from \$100.00 to \$75.00. No reduction in the penalty of \$1,200.00 for Respondents' failure to file timely responses to the Notices of Infraction is appropriate.

Therefore, upon Respondents' answer and plea, their application for suspension of the fine, and the entire record in this case, it is hereby, this \_\_\_\_\_ day of \_\_\_\_\_, 2000:

**ORDERED**, that Respondents shall cause to be remitted a single payment totaling **ONE THOUSAND SEVEN HUNDRED DOLLARS (\$1,700.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permit pursuant to D.C. Code § 6-2713(f).

/s/      **10-13-00**

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John P. Dean  
Administrative Judge